Review of NAIC Market Conduct Analysis Statement Data in April 2, 2021 Letter from FLOIR to Chairman Ingoglia

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I am an economist and former insurance regulator with 30 years of experience with insurance data collection and analysis for purposes of assisting insurance regulation and public policy analysis. I have been involved with the Market Conduct Annual Statement ("MCAS") from the germ of the idea through its initial and subsequent development and implementation. I have participated in the development of MCAS data elements, definitions and ratios. I hold the Advanced Market Conduct Management certification from the Insurance Regulatory Examiners Society.

I served as Chief Economist and Associate Commissioner for Policy and Research at the Texas Department of Insurance where I developed a data collection regime for market surveillance. I was also responsible for review and approval of personal auto and residential property rate filings. Since leaving the Department, I have consulted with public agencies and consumer organizations. I have testified before numerous state departments of the insurance, including the Florida Office of Insurance Regulation, on insurance rates. In 2002 and 2003 the then-Florida Department of Insurance appointed me to a panel of mediators to review rate filings. I also serve as Director of the Center for Economic Justice, a non-profit consumer advocacy organization dedicated to fair access and fair treatment of insurance consumers.

I've been asked to review the analysis and conclusions regarding MCAS data provided by Commissioner David Altmaier in his April 2, 2021 letter to the Chair of the Florida House Commerce Committee.

Summary of Findings

The presentation of the MCAS data by the FLOIR purportedly showing that Florida accounts for ¾ of all homeowner insurance claims litigation is a misuse of data intended for purposes other than supporting restrictions on consumers' access to the civil justice system. Further, the presentation of the data by the FLOIR is without context, excludes other MCAS data that would provide that context and promotes misinterpretation. While there may be other data relevant for the issue before the Legislature, a review of the public MCAS data suggest that any homeowners insurance litigation problem can be tied to a small number of insurers and is not an industry-wide problem demanding wholesale changes to the civil justice system.

Purpose of MCAS

The MCAS data is collected by state insurance regulators as part of a market conduct oversight function. The MCAS data, combined with other data collected by market regulators, assist regulators in identifying outlier companies whose consumer market outcomes vary from industry averages or have changed significantly over time.

> The Market Conduct Annual Statement (MCAS) was developed in the 2002 to provide regulators with a uniform system of collecting market-related information to help states monitor the market conduct of companies.[1]
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> The collection of MCAS data began in 2002 with the goal of collecting uniform market conduct related data. MCAS ratios were developed to provide more meaningful comparisons between companies than the raw data allowed.[2]
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> As a prioritization tool, MCAS ranks companies according to the level of concern to a market analyst. Ratios have been developed for each MCAS line of business utilizing the data elements obtained from the MCAS filing. There are seven private passenger auto and homeowners insurance ratios and eight life insurance and annuity ratios. The assumption behind each of the ratios is that the higher the ratio, the more attention is required from the market analyst. The rankings for each ratio, therefore, reflect how high the company ratio is when compared to the other companies in the state that filed an MCAS. The company's ranks for each ratio can be added together to arrive at an overall rank. A high overall rank means that a company has higher ratios than a company with a lower rank.[3]

No Public Access

The MCAS data are collected by state insurance regulators pursuant to their market conduct examination authority. Under that authority, all information collected from insurers is confidential. This means that the calculations made by the FLOIR are not subject to independent review or corroboration.

It should be noted that there is no rationale for keeping individual insurer MCAS data confidential. The use of market conduct examination authority to prompt insurer reporting of MCAS is a holdover from the pilot testing of the program in mid 2000's. It is evident from the d MCAS reporting template,[4] the data describe basic consumer market outcomes – like how long it

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1 https://content.naic.org/cipr_topics/topic_market_conduct_annual_statement_mcas.htm
2 https://content.naic.org/cipr_topics/topic_market_conduct_annual_statement_mcas.htm
3 NAIC Center for Insurance Policy and Research, *The Market Conduct Analysis Framework,* October 2012, page 22 at https://www.naic.org/cipr_newsletter_archive/vol5_market_conduct_framework.pdf
4 https://content.naic.org/sites/default/files/inline-files/industry_mcas_data_collection_2020_homeowners.pdf

takes to get a claim settled, how often the insurer non-renews a consumer, how often claims are taken to lawsuits. Consumers are often chastised for only paying attention to price when it comes to buying insurance, but insurance is the only consumer product for which there is no public data on how well the product performs.

By making MCAS data available to the public, consumers would have better information about insurer performance and have a stronger market position to promote competition. While some poorly performing insurers might be embarrassed, there are no trade secrets involved, unless one considers how slowly an insurer pays claims to be a trade secret. Further, were the MCAS data publicly available, other stakeholders – and not just the FLOIR – could review and analyze the data.

Flawed Analysis: No Context and Absence of Relevant Data

The MCAS Ratios

As noted above, in addition to the raw data submitted by insurers, regulators review of MCAS involves assessment of ratios intended to bring meaning to the raw data. For homeowners MCAS, the ratios are:

1. Claims Closed without Payment to Total Claims Closed
2. Claims Unprocessed at End of Period
3. Claims Paid Beyond 60 Days
4. Non-Renewals to Policies in Force
5. Cancellations over 60 Days to Policies in Force
6. Cancellations over 60 Days to Policies to New Policies Issued
7. Suits Opened During the Period to Claims Closed Without Payment

Of these ratios, several are particularly important for assessing individual company market performance. Claims paid beyond 60 days is an indicator of whether the insurer's claim settlement practices are timely or slow. A higher percentage of slow claims settlements is a logical cause of more litigation.

Non-renewals refer to actions by the company to decline to renew a policy. Again, a high percentage of non-renewals is a logical cause of more litigation.

Cancellations refer to consumer initiated actions to cancel the policy. A high percentage of cancellations suggests a high number of consumers dissatisfied with the company.

MCAS data is available to measure all claims closed during the period and the two components of that total – claims closed with payment and claims closed without payment. Ratio 7 captures all lawsuits, but measures that number only against claims closed without payment. Lawsuits may also be generated by claims closed with inadequate payment.

Florida Data Anomalies

Although individual company MCAS data submissions are not public, the NAIC compiles the company submissions into statewide aggregate ratios, so we can look at these ratios state by state.

When we look at Florida for the years 2016 to 2019, we see the following:

	2019	2018	2017	2016
Florida				
Claims Closed without Payment to Total Claims Closed	27.89%	25.76%	37.63%	34.59%
Claims Unprocessed at End of Period	19.56%	15.66%	13.79%	14.46%
Claims Paid Beyond 60 Days	50.57%	36.84%	27.38%	33.08%
Non-Renewals to Policies in Force	2.53%	1.98%	1.46%	1.45%
Cancellations over 60 Days to Policies in Force	1.00%	0.97%	1.17%	1.46%
Cancellations over 60 Days to Policies to New Policies Issued	6.92%	7.46%	5.51%	5.11%
Suits Opened During the Period to Claims Closed Without Payment	27.57%	19.91%	5.96%	13.46%

The first thing that jumps out is that ratio of suits opened to claims closed without payment jumps all over the place from a low of 5.96% to a high of 27.57%. This alone suggests not taking the data on face value, but examining the reliability of the data. For example, do individual insurers have similar experience to the statewide average or are the numbers skewed by one or a few insurers with bad practices? We discuss this issue below by reviewing additional MCAS data.

The FLOIR letter does not even identify this wide variation in ratio 7, let alone offer an explanation. Rather, the FLOIR simply concludes:

> Next, because Florida's domestic homeowners' insurance market is heavily reliant on Florida-only or regional insurers, we analyzed the litigation to claims ratio6 of insurers operating in Florida and other states to see if we detected a pattern of these insurers experiencing litigation higher than their peers in other states; a potential indicator of, *inter alia,* claims handling issues. We did not detect any such systemic pattern that could explain this disparity.

> While we continue to explore these and other possibilities to explain the disparity, OIR does not have a readily available explanation for Florida's outlier status other than to simply state that Florida is experiencing far more claims-related litigation than the 47 other reporting states.[5]

As shown below, there is clear evidence that Florida homeowners insurers perform differently than insurers in other states. It is unclear how FLOIR could have performed a thorough review of the MCAS data and failed to note these outcomes.

<u>Florida versus other States</u>

Let's now look at another state, California.

California

	2019	2018	2017	2016
Claims Closed without Payment to Total Claims Closed	32.82%	29.59%	31.79%	32.16%
Claims Unprocessed at End of Period	13.16%	15.88%	11.32%	11.23%
Claims Paid Beyond 60 Days	28.29%	26.41%	23.95%	25.20%
Non-Renewals to Policies in Force	1.53%	0.82%	0.60%	2.27%
Cancellations over 60 Days to Policies in Force	0.30%	0.35%	0.42%	0.43%
Cancellations over 60 Days to Policies to New Policies Issued	3.11%	2.81%	2.73%	2.46%
Suits Opened During the Period to Claims Closed Without Payment	1.61%	2.08%	1.47%	1.70%

We see that the ratio for suits opened to claims closed with payment is much higher in Florida than in California. But we also see the following:

- Ratio 7 is far more consistent in California than in Florida, again suggesting a data reporting problem from Florida insurers.
- Florida has a much higher percentage of claims paid beyond 60 days and in 2019, the Florida ratio was nearly twice as great as California's – 50.6% to 28.3%. This translates into tens of thousands of slowly settled claims in Florida.
- Insurers' non-renewals of policies were far higher in Florida than in California, even in 2019 when wildfires in California prompted fear among insurers in California.

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[5] Letter at page 3.

My review of the MCAS ratios for other states show that Florida is an outlier among the states regarding insurer performance. While it is impossible to identify the cause of the poor consumer treatment by Florida insurers based on MCAS ratios, one possible explanation of higher amounts of litigation in Florida may be weak market conduct enforcement by the FLOIR, forcing consumers to fend for themselves in Florida for issues the insurance regulator addresses in other states.

<u>MCAS Data Show Litigation Issues Limited to a Few Insurers, Not an Industry-Wide Problem</u>

We know that Florida has a number of Florida-only insurers. One analysis that might help put the data in context would be to compare all the ratios for the same insurer across states, in combination with an analysis, suggested above, of looking at variation among individual insurers within Florida. While the publicly-available data does not permit a review of individual insurer's performance across states, the data do show variation among insurers within Florida.

For ratio 7 for 2019, the MCAS data shows a breakout of the number of insurers in percentage groupings.[6] The data show for suits opened during the period to claims closed without payment:

Percentage of Suits to Claims Closed w/o Pay	# of Insurers FL	# of Insurers CA	# of Insurers IL
0	22	27	76
>0 to 10%	22	75	77
>10% to 20%	14	4	4
>20% to 30%	17	0	0
>30% to 40%	9	0	0
>40% to 50%	3	0	0
>50% to 60%	5	0	0
>60% to 70%	2	0	0
>70% to 80%	0	0	0
>80% to 90%	2	0	0
>90% to 100%	1	0	1
>100%	3	1	0

[6] https://content.naic.org/mcas_data_dashboard.htm

The data show outliers – the term used by market conduct analysts to identify companies whose market performance varies from the norm. In California and Illinois, almost every insurer operating in those states shows a low percentage of suits to claims closed without payment. In Florida, while the vast majority of insurers are also in the four lowest percentage groups, there are many insurers in high percentage groups, including 3 with more suits than claims closed without payment.

Given that the majority of insurers do not seem to be suffering from out-of-control litigation, these data suggest that the problem is with a number of insurers and not the system. Stated differently, if there was an industry wide problem with litigation, as opposed to litigation reflecting the performance of some insurers, we would expect to see most or all insurers in the high percentage categories and not the minority of insurers shown in the chart.

Conclusion

An analysis of the publicly-available MCAS ratios indicates that the MCAS data presented in the April 2, 2021 letter are incomplete, without context and misleading. A review of the available data suggests that homeowners litigation issues in Florida are associated with a small percentage of the homeowners insurers operating in Florida and is not an industry-wide problem. The data suggest that regulatory investigation of these companies' claim settlement practices is the logical approach, as opposed to major changes in the civil justice system.

The history of property insurance in Florida following Hurricane Andrew in 1992 suggests that the biggest problem facing the Florida market is the recognition of catastrophic risk faced by insurers offering property insurance. It is only by addressing this catastrophic exposure – through risk prevention and mitigation and devising ways to cap unlimited risk exposure for insurers – that more insurers will be willing to risk their capital in Florida. Curtailing consumers' access to the civil justice system does nothing to reduce catastrophe risk exposure for Florida insurers.